

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

REGINALD DESMOND WALLACE

PETITIONER

v.

CIVIL ACTION NO. 3:19-CV-465-TSL-BWR

STATE OF MISSISSIPPI, ET AL.

RESPONDENTS

**UNOPPOSED MOTION TO STAY DEADLINE TO RESPOND AND
TO SET A BRIEFING SCHEDULE**

Respondents move this Court to stay the deadline to respond to Petitioner Reginald Desmond Wallace's federal habeas petition and to set a briefing schedule. In support, Respondents submit the following:

I. Procedural History

On July 3, 2019, Wallace filed his federal habeas petition challenging his guilty pleas and sentences for armed robbery, kidnapping, and conspiracy in the Madison County Circuit Court. Doc. 1. This Court granted Respondents' motion to dismiss Wallace's petition as time-barred under 28 U.S.C. § 2244(d). Docs. 14, 15. In doing so, this Court agreed with Respondents' application of the well-established law applied by Mississippi federal courts and determined that Wallace's judgment of conviction was final on the date he pled guilty because that is when the time for seeking direct review in state court expired. Doc. 5 at 4; Doc. 10 at 2–3; Doc. 14. But the Fifth Circuit disagreed and held that Wallace's petition was timely because his judgment of conviction was final ninety days after he pled guilty, when his time for seeking certiorari review in the Supreme Court expired. *Wallace v. Mississippi, et al.*, 43 F.4th

482 (5th Cir. 2022); Doc. 19. Thus, the Fifth Circuit vacated this Court's prior decision and remanded Wallace's case to this Court for further proceedings. *Id.* Accordingly, this Court set Respondents' new deadline to respond to Wallace's petition by November 4, 2022. *See* Text Only Order dated October 3, 2022. For the reasons set forth below, Respondents respectfully request that this Court stay Respondents' deadline to respond to Wallace's petition and to set a briefing schedule in this case.

II. Analysis

After this Court entered final judgment, Jane Tucker, Wallace's original counsel of record in this Court, assisted him in perfecting his appeal but stated that she intended to withdraw from representation and that Wallace planned to proceed *pro se* on appeal. Doc. 17. Ms. Tucker has not yet formally withdrawn and remains one of Wallace's counsel of record on the docket in this case. Wallace proceeded *pro se* in filing his motion for a certificate of appealability in the Fifth Circuit, but when the Fifth Circuit granted that motion, the Court appointed pro bono counsel to represent him. *See Wallace v. Mississippi, et al.*, No. 20-60098 (5th Cir. June 12, 2020, Feb. 3, 2021, Feb. 9, 2021, and Mar. 15, 2021). Jennifer Freel and Emily Rhine of Jackson Walker LLP in Austin, Texas, who represented Wallace on appeal, stated that they wished to continue to represent Wallace in this Court on remand but had to first retain local counsel, which is required under the local rules for pro hac vice admission. *See* Email to this Court dated October 19, 2022; *see also* L. U. Civ. R. 83.1. Two days ago on October 25, 2022, Robert B. McDuff entered his appearance as counsel for Wallace and filed motions for pro hac vice admission on behalf of Ms. Freel and Ms.

Rhine. *See* Docs. 22, 23, 24. This Court conditionally granted these motions for pro hac vice admission earlier today. *See* Text Only Order dated October 27, 2022.

Ms. Rhine and Ms. Freel also stated to the undersigned and to this Court that they intend “to file a short supplement to Mr. Wallace’s petition that will elaborate on his habeas claim and provide additional case law.” *See* Email dated October 19, 2022. No supplemental petition has been filed yet, and Respondents’ deadline to respond to Wallace’s federal habeas petition remains November 4, 2022.

Accordingly, this motion requesting a stay of the responsive deadline and a briefing schedule would promote the interests of efficiency and judicial economy and prevent piecemeal litigation of the issues. Importantly, the requested relief in this motion is unopposed by Wallace’s counsel. And, as stated above, the motions for pro hac vice admission of Ms. Freel and Ms. Rhine were only recently filed by Mr. McDuff and conditionally granted by this Court. Wallace has thus not yet filed a supplement to his petition, so the requested relief would also prevent piecemeal litigation of the issues. The requested relief would likewise provide established deadlines for both sides to file their respective pleadings. Respondents thus ask that this Court grant this unopposed motion and set the following agreed upon deadlines in this case:

- 1) Wallace’s deadline to file any supplement to his petition is on or before November 22, 2022;
- 2) Respondents’ deadline to respond to Wallace’s petition and any supplement is on or before January 5, 2023; and
- 3) Wallace’s deadline to reply to Respondents’ responsive pleading is on or before January 20, 2023.

III. Conclusion

Respondents request that this Court grant relief consistent with this motion, staying Respondents' current November 4, 2022 deadline to respond to Wallace's federal habeas petition and setting the parties' agreed upon briefing schedule. Respondents further request that this Court dispense with the requirement of filing a brief in support of this motion, as it is self-explanatory.

THIS the 27th day of October, 2022.

LYNN FITCH
Attorney General of Mississippi

BY: /s/ Erin E. Rutherford
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CERTIFICATE OF SERVICE

I, Erin E. Rutherford, certify that I have electronically filed this document with the Clerk of the Court using the ECF system, which sent notification to United States Magistrate Judge Bradley W. Rath and all counsel of record.

THIS, the 27th day of October, 2022.

/s/ Erin E. Rutherford
ERIN E. RUTHERFORD

Counsel for Respondents